

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
v.)	No. 3:22-CR-104-KAC-DCP
)	
FRANK EDWARD SMALL,)	
)	
Defendant.)	

MEMORANDUM AND ORDER

All pretrial motions in this case have been referred to the undersigned pursuant to 28 U.S.C. § 636(b) for disposition or recommendation as appropriate. This case came before the undersigned on December 20, 2022, for a hearing on Defendant Frank Small's Motion to Continue Deadlines and Trial Date [Doc. 18], filed on December 14, 2022.¹ Assistant United States Attorney Frank Dale, Jr. appeared on behalf of the Government. Attorney Devin DeVore appeared on behalf of Defendant Small, who was also present.

In his motion [Doc. 18], Defendant asks the Court to continue the January 24, 2023 trial date and associated deadlines. The motion relates that counsel for Defendant was recently retained and substituted as counsel for Defendant on December 9, 2022. Counsel for Defendant states in the motion that he needs additional time to review the discovery in this case, which is voluminous, and prepare for trial. The motion relates that the motion deadline in this matter was December 16, 2022, and the plea deadline is set for December 26, 2022. Counsel for Defendant submits that the ends of justice require a continuance. Finally, the motion relates that counsel has spoken with AUSA Dale, who has no objection to the requested continuance.

¹ At the hearing, the Court also took up Defendant's Motion for Pretrial Release on Conditions and Request for Detention Hearing [Doc. 17], which the Court will address in a separate order.

At the hearing, counsel for Defendant stated he is still reviewing discovery and needs additional time to complete his review, determine whether there is a need to file any pretrial motions, discuss with his client any potential resolutions of the case, and otherwise prepare for trial. AUSA Dale confirmed that the Government has no opposition to a continuance.

Based upon the information provided by Defendant Small in his motion and at the hearing, the Court finds the ends of justice served by granting a continuance outweigh the interests of Defendant and the public in a speedy trial. *See* 18 U.S.C. § 3161(h)(7)(A). In making this determination, the Court has considered the factors set forth in 18 U.S.C. § 3161(h)(7)(B). Specifically, the Court concludes that failing to grant a continuance would both result in a miscarriage of justice and deny counsel for Defendant the reasonable time necessary for effective preparation, taking into account the exercise of due diligence. *See id.* § 3161(h)(7)(B)(i)–(iv). Counsel needs additional time to review the voluminous discovery, prepare any pretrial motions that may be necessary, confer with his client as to a possible resolution of this case, and otherwise prepare for trial, all of which cannot be done by the January 24, 2023 trial date. The Court therefore **GRANTS** Defendant Small’s Motion to Continue Deadlines and Trial Date [**Doc. 18**]. The trial of this case is reset to **July 18, 2023**. A new, comprehensive, trial schedule is included below.

Because the Court has found that the ends of justice served by granting a continuance outweigh the interests of Defendant and the public in a speedy trial, all of the time between the filing of the motion on December 14, 2022, and the new trial date of July 18, 2023, is fully excludable time under the Speedy Trial Act. *See* 18 U.S.C. § 3161(h)(1)(D), -(h)(7)(A)–(B).

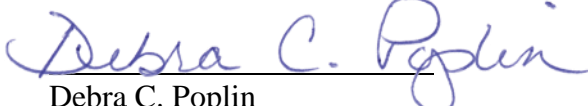
Accordingly, the Court **ORDERS** as follows:

- (1) Defendant Small’s Motion to Continue Deadlines and Trial Date [**Doc. 18**] is **GRANTED**;

- (2) Trial of this case is reset to commence on **July 18, 2023, at 9:00 a.m.**, before the Honorable Katherine A. Crytzer, United States District Judge;
- (3) All time between the filing of the motion on **December 14, 2022**, and the new trial date of **July 18, 2023**, is fully excludable time under the Speedy Trial Act for the reasons set forth herein;
- (4) The deadline for filing pretrial motions is **February 15, 2023**, and responses to motions are due on or before **March 1, 2023**;
- (5) The new deadline to file a plea agreement in the record and to provide reciprocal discovery is **June 20, 2023**;²
- (6) The deadline for motions *in limine* is extended to **June 26, 2023**;
- (7) The parties are to appear before the undersigned for a final pretrial conference on **June 27, 2023, at 10:00 a.m.**; and
- (8) Requests for special jury instructions with appropriate citations to authority pursuant to Local Rule 7.4. shall be filed on or before **June 30, 2023**.

IT IS SO ORDERED.

ENTER:


Debra C. Poplin
United States Magistrate Judge

² The deadline to file a plea agreement and provide reciprocal discovery has been altered from the June 19, 2023 date set at the hearing, as that date is a federal holiday.